Nos. 83-1660 and 83-6381

In the Supreme Court of the United States

OCTOBER TERM, 1984

CHARLES M. ATKINS, COMMISSIONER OF THE MASSACHUSETTS DEPARTMENT OF PUBLIC WELFARE, PETITIONER

v.

GILL PARKER, ET AL.

GILL PARKER, ET AL., PETITIONERS

v.

JOHN R. BLOCK, SECRETARY OF AGRICULTURE, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENT SUPPORTING REVERSAL

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QUESTIONS PRESENTED *

1. Whether the Due Process Clause requires that individualized advance notice be given to each affected food stamp recipient prior to the implementation of statutory benefit level adjustments, when the statutory change can be implemented without any new or additional factual findings as to individual recipients.

2. Assuming that the Due Process Clause requires some type of individualized advance notice, whether the notices issued by the Massachusetts Department of Public Welfare in the instant case, coupled with the other procedures for reducing the risk of error, were constitutionally sufficient.

3. Whether the notices in this case were adequate under the Food Stamp Act and the pertinent federal regulations.

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* This brief will address only those issues presented in the Commonwealth's petition, No. 83-1660. The remedy issues presented by plaintiff-respondents in No. 83-6381 will be addressed in our reply brief.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A38)[1] is reported at 722 F.2d 933. The opinion of the district court (Pet. App. A42-A98) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on December 7, 1983. The petition in No. 83-6381 was filed on March 6, 1984. The conditional cross-petition, No. 83-1660, was filed on April 9, 1984. The petition and the cross-petition were granted on June 18, 1984. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

The relevant provisions of the Food Stamp Act, 7 U.S.C. 2011 *et seq.*, the Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, 95 Stat. 357 *et seq.*, and the implementing regulations, 7 C.F.R. Pts. 272-273, are set forth in the appendix to this brief.

STATEMENT

1. The Food Stamp program is a federally-funded, state-administered effort to "permit low-income households to obtain a more nutritious diet through normal channels of trade" (7 U.S.C. 2011). Unlike the "categorical" welfare benefit programs such as Supplemental Security Income (SSI) or Aid to Families with Dependent Children (AFDC), persons may participate in the Food Stamp program solely on the basis of income and resources. For this reason, the Food Stamp program is the largest of the federal welfare programs; over 20 million Americans—almost one of every eleven—receive food stamps.

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[1] "Pet. App." denotes the appendix to the petition in No. 83-1660.

The Secretary of Agriculture prescribes uniform standards for food stamp eligibility (see 7 U.S.C. 2014). Individual eligibility determinations are made by agencies of the states pursuant to approved plans under federal standards. State agencies also perform the actual distribution of coupons ("food stamps"). 7 U.S.C. 2020(a). Households certified as eligible are issued food stamps that may be used to purchase food at approved stores. 7 U.S.C. 2012, 2013. Food stamps are redeemed through the United States Treasury; the federal government bears the entire cost. 7 U.S.C. 2013(a). The Secretary is authorized to reimburse the state agencies for 50% of the administrative costs associated with processing applications, storing and distributing coupons, and making administrative determinations. 7 U.S.C. 2025(a).[2]

a. Eligibility for, and level of, food stamp benefits is largely based upon a comparison of the cost of a diet sufficient to feed the household, including an allowance for purchase error, waste, and spoilage,[3] with income, net of certain deductions.[4] Until a new monthly reporting

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[2] This reimbursement rate may be adjusted downward or upward in accordance with the state's error rate. 7 U.S.C. 2025(c) and (d).

[3] The allotment is based upon the cost of a "Thrifty Food Plan" or "TFP" (7 U.S.C. 2012(o)) which is, in turn, inflated intentionally to permit variety, to allow for excess in the recommended daily allowances for food energy levels, and to account for purchase error, waste, and spoilage. H.R. Rep. 95-464, 95th Cong., 1st Sess. 186-207 (1977). As of this writing, the maximum allotment for a family of four in the continental United States is $253 per month (48 Fed. Reg. 45442-45444 (Oct. 5, 1983)). Eligible households of one or two members are guaranteed a monthly minimum benefit of $10 (7 U.S.C. 2017(a); 7 C.F.R. 273.10(e)(2)(ii)(C)).

[4] In addition to the deduction involved in this case, recipients are permitted a standard deduction of $89 for each household. A household may also qualify for additional deductions totalling up to $125 per month for dependent care and "excess shelter" costs (the cost of housing exceeding 50% of net income). Medical expenses over $35 for the elderly and disabled are deductible with-

system went into effect, households certified as eligible for food stamp benefits ordinarily received the same level of benefits for each month of their certification period.[5] Even before implementation of monthly reporting, certain events would trigger a reduction in the level of benefits prior to the end of a household's certification period—for example, an increase in household income, the departure of a dependent from the household, or a conviction for program fraud. Such events would cause the state to commence a household-specific "adverse action" proceeding. Except where the state learns of such events through a report from the beneficiary household itself, federal regulations require that, 10 days prior to the effective date of the adverse action, the household be sent a notice stating (7 C.F.R. 273.13(a)(2) (1983)):[6]

> The proposed action; the reason for the proposed action; the household's right to request a fair hearing; the telephone number and, if possible, the name of the person to contact for additional information; the availability of continued benefits; and the liability of the household for any overissuances received while awaiting a fair hearing if the hearing official's decision is adverse to the household. If there is an individual or organization available that provides free legal representation, the notice shall also advise the household of the availability of the service.

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out limitation. See 7 C.F.R. 273.9(d). (These figures are applicable to the lower 48 states and the District of Columbia.)

[5] Congress now requires monthly reporting of household income by many food stamp recipients, and states make appropriate monthly benefit adjustments on the basis of those reports. 7 U.S.C. 2015(c). Congress has specifically permitted states to make adjustments based on information provided by the recipients without advance notice to the recipients. 7 U.S.C. 2020(e)(10) (last clause); see 7 C.F.R. 273.13(a)(3).

[6] The first sentence quoted in text was inadvertently omitted in the current edition of the Code of Federal Regulations.

Another broad category of event that may affect a household's allotment of food stamps during its certification period is a change in the law to be applied. Such "mass changes" affect all certified households or defined classes thereof, and are calculated on the basis of the household data already on file.[7] Federal regulations require that states implementing a mass change send notices to each affected household, no later than the implementation date of the change, advising them of the change in general terms. 7 C.F.R. 273.12(e)(2)(ii). The regulations further require that any food stamp recipient who believes that his allotment was erroneously calculated be afforded a hearing upon request. If a hearing is timely requested, the former level of benefits is to be restored until the recipient's complaint is acted upon, unless the complaint is based upon opposition to the underlying legal change. *Ibid.* The advance notice and content requirements applicable to "adverse actions" do not apply to mass changes. 7 C.F.R. 273.13(b)(1).

b. As with most federal welfare benefit programs, the Food Stamp program involves the application of factual data to the statutory and regulatory requirements. Although determinations of eligibility are generally less factually complex than those in other programs, some errors are inevitable. Accordingly, Congress and the Secretary have instituted certain measures to reduce the incidence of errors. Before an application for participation in food stamps is approved, the state must verify the information provided by the applicant household.[8] Upon

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[7] Mass changes include statutory adjustments to the eligibility criteria or allowable deductions, adjustments in the benefits provided by other state and federal welfare programs, Social Security benefit changes, and "other changes in the eligibility criteria based on legislative or regulatory actions." 7 C.F.R. 273.12(e).

[8] Gross nonexempt income, alien status, utility expenses, medical expenses, social security numbers, residency, and identity must be verified. Other verifications are optional. See 7 C.F.R. 273.2.

approval, the household receives notice of its level of benefits and period of eligibility. Recipients have the right to protest the allotment then, or at any time they have a disagreement.[9] Recipients have an ongoing right to review the information in their case file, which must contain all information used by the state to compute benefit levels. See 7 C.F.R. 272.1(c)(2), 273.15(p) and 273.2.

To avoid continued use of data that may no longer be valid, a household's benefits are limited to a specified "certification period" of between one and twelve months, depending upon an administrative evaluation of the financial stability of the household. See 7 U.S.C. 2012(c); 7 C.F.R. 273.10(f)(3)-(6). To receive benefits beyond the certification period, the household must reapply, updating the relevant data in the file. 7 U.S.C. 2012(c), 2014(f) and 2015(c); see *Banks* v. *Block*, 700 F.2d 292 (6th Cir. 1983), cert. denied, No. 82-7015 (Oct. 31, 1983). If a previously undetected error to the recipient's detriment is uncovered, either upon recertification or in any other manner, full refund for up to one year is provided. 7 U.S.C. 2020(e)(11).

To reduce errors further, Congress recently added a system of incentives to reward states that are able to lower error rates—both overpayments and underpayments —by increasing the federal contribution for administra-

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[9] At the time of their initial application, and at least once per year at the time of recertification, food stamp recipients are notified, directly below their signature on the form, that:

> You or your representative may request a fair hearing either orally or in writing if you disagree with any action taken on your case. Your case may be presented at the hearing by any person you choose.

DX H, III C.A. App. 292; see 7 C.F.R. 272.3(b)(1). See also DX L, III C.A. App. 308 (notice of fair hearing rights contained on Massachusetts eligibility determination form).

tive costs to 60%, or by reducing the federal contribution, as appropriate. 7 U.S.C. 2025(c) and (d).[10]

2. This case involves a change in the so-called "earned income disregard." To maintain an incentive to earn and report income, the Secretary adopted a policy of deducting or "disregarding" a portion of a household's earned income in making eligibility and benefit level determinations. Congress codified a 20% earned income "disregard" in the Food Stamp Act of 1977, Pub. L. No. 95-113, Tit. XIII, § 1301, 91 Stat. 963; see 7 U.S.C. (Supp. II 1978) 2014(e). Application of the disregard reduces a household's net income, thus easing eligibility and raising benefits above what they might otherwise be on a strict income calculation.

Section 106 of the Omnibus Budget Reconciliation Act of 1981 (OBRA), Pub. L. No. 97-35, 95 Stat. 360, amended the Food Stamp Act to reduce the earned income disregard from 20% to 18%. See 7 U.S.C. 2014(e). As a result of this change, some participating households experienced a small reduction in their monthly food stamp allotment, some became ineligible for food stamps, and others were entirely unaffected.[11] We are advised that the reductions involved did not exceed $6 per month for a four-member household if the household remained eligible for benefits. In some instances a household with relatively high income at the margin of eligibility prior to the enactment of OBRA was rendered ineligible as a result of the decrease in the earned income

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[10] The federal contribution may be reduced for error rates exceeding 9% for 1983, 7% for 1984, and 5% for 1985. 7 U.S.C. 2025(d).

[11] The reduction in the earned income disregard did not necessarily reduce the benefits of a household with earned income, especially if the household had relatively small amounts of earned income or a low food stamp allotment. As the amount of earned income increased, the reduction in the amount disregarded would generally increase as well, gradually reducing the food stamp allotment.

disregard. The record does not provide any breakdown on how the Massachusetts food stamp recipients were actually affected.

To implement Section 106 of OBRA, the Department of Agriculture issued regulations, 46 Fed. Reg. 44712 *et seq.* (Sept. 4, 1981), directing the states to effectuate the change in the earned income disregard by no later than December 30, 1982 (absent a waiver), and to provide notice to recipients in the manner prescribed for mass changes (*id.* at 44722). See 7 C.F.R. 273.12(e)(ii). The Massachusetts Department of Public Welfare implemented the change by means of an instruction to the Bureau of Systems Operation, a state agency that does computer work, to modify the computer program to lower the earned income disregard from 20% to 18% (see Pet. App. A73). The new disregard level was applied to the data on record for each recipient. No individual factual determinations were needed to implement the change.

Before the statutory change was put into effect, the Massachusetts Department of Public Welfare issued notices to food stamp households believed to be affected by the statutory reduction in the earned income disregard (Pet. App. A3). These notices explained the basis for the change and supplied relevant citations (*id.* at A44-A45). The notices informed the recipients of their right to appeal if they disagreed with the action, and stated that the reductions would not go into effect during the pendency of any appeal filed within 10 days of the date of the notice.[12] Recipients could appeal by signing and dating a form included with the notice and returning it to the address listed on the notice, or by requesting an appeal over the telephone or in person (*id.* at A45). The notices, however, were ambiguously dated "11/81" (*id.* at A4).

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[12] In this respect, the Commonwealth's practice exceeded federal requirements. Cf. 7 C.F.R. 273.12(e)(2)(ii).

3. On December 10, 1981, four food stamp recipients brought this action in the United States District Court for the District of Massachusetts against the Commonwealth and the Secretary to challenge the validity of these notices on behalf of a class of approximately 16,500 households that had received the notices. The district court issued a temporary restraining order barring implementation of the statutory change in the earned income disregard.

The Commonwealth then took steps to moot any question arising from the ambiguity of the appeal deadline by issuing a second notice, dated December 26, 1981, and mailed on or about December 24. The first page of the December notice stated that the earlier notice had been withdrawn. The second page of the notice began "* * * IMPORTANT NOTICE—READ CAREFULLY * * *" and stated: [13]

> RECENT CHANGES IN THE FOOD STAMP PROGRAM HAVE BEEN MADE IN ACCORDANCE WITH 1981 FEDERAL LAW. UNDER THIS LAW, THE EARNED INCOME DEDUCTION FOR FOOD STAMP BENEFITS HAS BEEN LOWERED FROM 20 TO 18 PERCENT. THIS REDUCTION MEANS THAT A HIGHER PORTION OF YOUR HOUSEHOLD'S EARNED INCOME WILL BE COUNTED IN DETERMINING YOUR ELIGIBILITY AND BENEFIT AMOUNT FOR FOOD STAMPS. AS A RESULT OF THIS FEDERAL CHANGE, YOUR BENEFITS WILL EITHER BE REDUCED IF YOU REMAIN ELIGIBLE OR YOUR BENEFITS WILL BE TERMINATED. (FOOD STAMP MANUAL CITATION: 106 CMR: 364.400).

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[13] A photocopy of the December notice is reproduced at J.A. 4-5.

The notice then explained that the household had a "RIGHT TO A FAIR HEARING" and explained:

> YOU HAVE A RIGHT TO REQUEST A FAIR HEARING IF YOU DISAGREE WITH THIS ACTION. IF YOU ARE REQUESTING A HEARING, YOUR FOOD STAMP BENEFITS WILL BE REINSTATED * * *. IF YOU HAVE QUESTIONS CONCERNING THE CORRECTNESS OF YOUR BENEFITS COMPUTATION OR THE FAIR HEARING PROCESS, CONTACT YOUR LOCAL WELFARE OFFICE. YOU MAY FILE AN APPEAL AT ANY TIME IF YOU FEEL THAT YOU ARE NOT RECEIVING THE CORRECT AMOUNT OF FOOD STAMPS.

As with the November notice, recipients were provided a card which they could mail to obtain a hearing; alternatively, they could obtain a hearing by placing a telephone call or asking in person.

After receiving this notice, plaintiff-respondents amended their complaint to attack its sufficiency. A renewed application for a temporary restraining order was denied by the district court, and the reductions required by OBRA Section 106 were effectuated for Massachusetts food stamp recipients beginning in January 1982.

On March 24, 1983, after a two-day trial, the district court ruled in favor of plaintiff-respondents and entered findings of fact and conclusions of law (Pet. App. A42-A98). The district court found that the "nature of the language" and the format of the notices rendered them "very difficult to understand especially considering the education level of most recipients" (*id.* at A96).[14] The

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[14] The district court's finding is based upon the testimony of reading experts. According to the district court (Pet. App. A60, A64), the words and phrases that rendered the December notices difficult for some recipients to comprehend included: "within," "division," "recent," "federal," "benefit," "benefits," "eligibility," "eligible," "appeal," "reduced," "reduction," "deduction," "request,"

district court further found that the notices could have been written more simply, and could have been framed to state the former benefit level for the particular household, the new benefit level, "a precise statement of the reason for [and] the nature of the change, and sufficient information to allow its recipient to determine whether the proposed action is correct" (*id.* at A76).

The district court concluded (Pet. App. A88-A89) that the calculation of food stamp benefits, which "requires an individualized determination of income, expenses, and deductions for each recipient[,] * * * creates substantial risks of erroneous deprivation." The district court made no factual finding that the error rate was caused by implementation of the change in the earned income disregard.[15] Indeed, none of the named plaintiffs suffered an erroneous deduction in benefits as a result of the statutory change (see *id.* at A50-A56).[16] The court

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"action," "local," "welfare," "percent," "disagree," "terminated," "computation," "contact," "enclosed," "current," "denied," "your right to a fair hearing," "reinstated," "the earned income deduction has been lowered from 20 percent to 18 percent," and "appeal is denied."

[15] The only specific source of errors identified by the district court was the backlog in the computerized system for monthly reporting of income data (M.I.R.S.). Pet. App. A78-A80. Errors in income data would result in errors in food stamp allotments wholly without regard to any change in the earned income disregard. The court also inferred from an informal study by a law student working for plaintiff-respondents that there were persons with no earned income who received notices and/or changes in benefits (Pet. App. A82-A83). For reasons explained below (see note 26, *infra*), this study was not reliable.

[16] Each of the named plaintiffs appealed his reduction in benefits; none identified a computational error resulting from the change in the earned income disregard. Cecilia Johnson's benefits were reduced as a result of an erroneous report of a change in income. Her benefits were continued at the prior level during an administrative appeal, which corrected the error. Pet. App. A50-A52. Gill Parker's "benefits were not reduced as a result of the

acknowledged (*id.* at A91) that "[i]t is unclear from the record the possible monetary loss to those households affected by the December notice."

Invoking the procedural due process analysis outlined in *Mathews* v. *Eldridge*, 424 U.S. 319, 335 (1976), the district court held that the notices issued by the Commonwealth were insufficient. The court reasoned that plaintiffs presented "extremely significant" private interests in securing food stamp benefits; that there was a substantial risk of erroneous deprivation of benefits that use of more complete notices could have reduced; and that these improvements could have been implemented without "any real hardship" to government interests (Pet. App. A86-A95). The district court also held that because of its format and difficult language, the notice did not reasonably convey the information it contained (*id.* at A96-A98). In addition, the district court held, without elaboration, that the Massachusetts notices violated the advance notice and content requirements applicable to "adverse actions" established by the Food Stamp Act and federal regulations (*id.* at A98).[17]

The district court directed the defendants to restore to every member of the class that had received the Massachusetts notice the amount by which his or her food stamp

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challenged notices" (*id.* at A53). Stephanie Zades' benefits were reduced, apparently in connection with a dispute over her eligibility for AFDC. After a hearing, her benefits were restored. Pet. App. A55. The reduction in Madeline Jones' benefits was sustained on administrative appeal (*id.* at A55-A56). To the extent that there were errors in the food stamp allotments of the named plaintiffs, they were attributable to mistakes in underlying income data unrelated to changes in the earned income disregard. We assume (see Fed. R. Civ. P. 23(a)) that these claims are representative of the class.

[17] The district court also found that the Massachusetts notice was in violation of the Department's multi-lingual notice requirements, 7 C.F.R. 272.4(b)(3). That holding was not appealed, and only the question of remedy for that violation is before this Court.

benefits had been reduced in compliance with Section 106 of OBRA, for the period between January 1, 1982, and the date that the recipient household received sufficient notice, had its benefits terminated for an unrelated reason, or had its file recertified (Pet. App. A101). The court also permanently enjoined the Massachusetts Commissioner of Public Welfare from reducing or terminating the benefits of any food stamp recipient without providing 10 days' advance notice containing at least the following information (*id.* at A103-A104):

> a. An explanation of the reason for the proposed action;
>
> b. The specific citation that supports the proposed action;
>
> c. The benefit amount prior to the proposed change;
>
> d. The benefit amount after the proposed change;
>
> e. Sufficient information to allow the recipient to determine whether an error has been made; and
>
> f. The effective date of the proposed action.

The Commonwealth was directed to submit for the court's review and approval new regulations "containing specific standards to ensure that all future food stamp notices of reduction or termination are written and printed so as to be understandable to recipients of those notices" (*id.* at A102).

4. The court of appeals affirmed in part and reversed in part (Pet. App. A1-A38). The court of appeals sustained the district court's ruling that the Commonwealth's notice of the implementation of the reduction in the earned income disregard was constitutionally deficient (*id.* at A11-A28). The court rejected the government's argument that because the change in the earned income disregard was statutorily mandated, food stamp recipients could not claim any procedural due process rights respecting notice of its implementation (*id.* at A11-A14). The

court reasoned that unless a statutory entitlement program is entirely abolished, "people have the right to participate in accordance with" the "preestablished ground rules" and that the implementation of any statutory change in the program affecting the terms of participation is subject to procedural due process review under *Mathews* v. *Eldridge*, *supra* (Pet. App. A13-A14, A17). Subjecting the district court's application of the *Eldridge* factors to the clearly erroneous standard of appellate review (*id.* at A19-A20, A25-A26), the court of appeals declined to set aside the lower court's constitutional ruling (*id.* at A21-A25).

In addition, the court of appeals upheld the district court's ruling that the Commonwealth's notices violated the Food Stamp Act, 7 U.S.C. 2020(e)(10), and the Department of Agriculture's mass change regulations, 7 C.F.R. 273.12(e)(2)(ii), reasoning (Pet. App. A31): "[w]e doubt that Congress intended a constitutionally deficient notice to satisfy the statutory notice requirement." The court of appeals reversed the district court's holding that the Massachusetts notice violated the Department's "adverse action" regulations, 7 C.F.R. 273.13(a). The court observed that 7 C.F.R. 273.13(b)(1) expressly exempts mass changes, such as that involved here, from the requirements of the adverse action regulations. Pet. App. A28-A29.

The court of appeals set aside the remedies ordered by the district court (Pet. App. A32-A38). The court stated (*id.* at A33 (emphasis added)) that the complete restoration of food stamp benefits at their former level to all recipients

> was unwarranted, given the absence of any showing that a substantial percentage of these recipients had their benefits improperly reduced or terminated. *Restoration of benefits would constitute a windfall to recipients and would result in the continuation of benefits at a level exceeding that authorized by Congress.*

Furthermore, because food stamp benefits are funded by the federal government, a remedy of "wholesale benefit restoration" would have the perverse effect of undermining the states' incentive to provide sufficient notice (*id.* at A34).

Although rectification of the notice deficiencies would ordinarily be the most appropriate remedy, the court of appeals observed that providing such additional notice after the statutory change had already been implemented might "merely confuse recipients" (Pet. App. A35). Accordingly, the court of appeals instead directed the Commonwealth to undertake a "thorough and accurate" review of the files of all members of the class and to correct any errors discovered (*id.* at A35-A37). Finally, because there was no indication that the Commonwealth had acted in bad faith or would issue deficient notices in the future, and had in fact issued valid notices in comparable situations in the past, the court of appeals concluded that "the district court placed an improper and unnecessary burden upon [the state agency] when it specified the form of future notices and required the submission and promulgation of new notice regulations" (*id.* at A38).

INTRODUCTION AND SUMMARY OF ARGUMENT

The courts below have held that the Due Process Clause precludes a state from implementing a congressionally-mandated adjustment in food stamp benefit levels without providing advance notice to all affected beneficiaries that includes particularized information about how the statutory change will affect them, in a format satisfying judicially-created rules on line spacing and length, capitalization, type size, and reading comprehension level.

Ostensibly, the purpose of this notice is to enable recipients to discover, and thus to challenge, any errors that may occur through implementation of the statutory change. In fact, however, the statutory change is accomplished by means of a simple alteration in the computer

program, with no more likelihood of error than exists any time changes are made or a computer run is conducted. Moreover, the current system has numerous safeguards against computational errors, including federal financial incentives for reducing error, periodic (at least annual) verification of all data, ongoing opportunities for any beneficiary to examine his file and to challenge inaccuracies, and (most pertinent) notice of statutory changes in general terms with a full explanation of how to obtain a fair hearing.

The imposition of additional notice requirements by the courts is more than a minor nuisance. Procedure—especially additional and unanticipated procedure—is not without cost. *Wheeler* v. *Montgomery*, 397 U.S. 280, 284 (1970) (Burger, C.J., dissenting). Over the years, Congress and successive administrations have consistently improved this program, balancing a complex of legitimate concerns: efficiency, accuracy, fairness, privacy, and cost. The courts below have intruded, quite unnecessarily, on the control of Congress and the Secretary over the administration of the Food Stamp program.

The courts' approach constitutionalizes details of administrative operation that are more appropriately left to program managers. Imposition of constitutional standards on such technical details as type size and reading difficulty, on a necessarily after-the-fact basis, makes it far more difficult for program managers to perform their duties on a common-sense basis without tripping over complex and ill-defined legal standards. As this case illustrates, legal requirements frequently must be implemented quickly, without the luxury the district court enjoyed of months of study and expert hindsight. Is it really so desirable that constitutional lawyers and linguistic experts must be consulted before a state can so much as send out a notice?

The approach taken below also interferes with Congress's ability to set the levels of food stamp benefits.

The courts below seem to have lost sight of the fact that Congress determined that a change in benefit levels should be made; neither the Commonwealth nor the courts have authority to countermand that determination. On the contrary, the courts have a "duty * * * to observe the conditions defined by Congress for charging the public treasury." *Federal Crop Insurance Corp.* v *Merrill*, 332 U.S. 380, 385 (1947). If needless and unanticipated notice requirements are imposed, the Commonwealth is prevented from complying with the statutory directive. Notice requirements should not be used as a weapon to delay or prevent implementation of the law.

Of course, if the notice standards imposed below were genuinely required as a matter of due process, the uncertainty and administrative disruption would have to be tolerated. However, in the case of arithmetic recalculations based on preexisting data, made necessary by a change in the governing statute, we believe that there is no constitutional requirement whatsoever of notice to affected persons (other than the notice all citizens receive through official statutory compilations and the Federal Register). It follows, *a fortiori*, that the notice actually provided here satisfied constitutional standards.

Even if some form of individual notice were constitutionally mandated, the notice actually provided by the Commonwealth was sufficient. There is no requirement that notice of a statutory change include a numerical quantification of how the change will affect each household. It is sufficient if the notice includes (as these did) a general statement of the nature of the change and an explanation of how to obtain a hearing. Nor is there any requirement that notices conform to expert analyses of reading comprehension levels, or to specific choices of typography. It is sufficient if the notice conveys accurate information in a manner reasonably designed to inform.

The court of appeals concluded, however, that the notices provided by the Commonwealth in this case were

constitutionally deficient. It rejected the argument that Congress may effectuate changes in welfare programs without providing advance notice, and upheld, on an erroneously deferential "clear error" basis, the district court's constitutional requirements regarding content and format. The court of appeals also concluded, in effect, that the statute governing the Food Stamp program incorporates this constitutional standard and, on that basis, that there was a statutory violation as well. We disagree with each of these conclusions. Ordinarily, we would address the statutory argument first.[18] However, because the court's statutory argument follows solely from its constitutional argument, we will address the latter first.

ARGUMENT

I. THE DUE PROCESS CLAUSE DOES NOT REQUIRE INDIVIDUALIZED ADVANCE NOTICE OF LEGISLATIVE REDUCTIONS IN WELFARE BENEFIT LEVELS

A. Congress Has The Authority To Modify Benefit Levels Without Providing Affected Persons Notice And An Opportunity To Comment

This is not a case like *Goldberg* v. *Kelly*, 397 U.S. 254 (1970), or *Mathews* v. *Eldridge*, 424 U.S. 319 (1976), in which an individual's benefits are terminated or reduced as a result of the government's (possibly erroneous) conclusion that factual circumstances have changed. In such an instance, the individual has a "'legitimate claim of entitlement'" (*Memphis Light, Gas & Water Division* v. *Craft*, 436 U.S. 1, 9, 12 (1978) (citations omitted)) to the benefits, and a concomitant constitutional right to pro-

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[18] The Commonwealth did not specifically raise the statutory question in its petition for a writ of certiorari. However, since the court of appeals' statutory holding has no support or basis independent of its constitutional holding, we consider it fairly subsumed within the questions presented.

cedural protections appropriate to determining whether, on the facts, his claim should prevail.

Here, the food stamp benefits of the respondent class have been reduced (and in cases on the margin of eligibility, terminated), not on the basis of any debatable change in factual circumstances, but because Congress has amended the law. Respondents have no "legitimate claim of entitlement" to any benefits in excess of those voted by Congress, and accordingly, no liberty or property interest in continuation of the prior benefit level that would call for notice or an opportunity to be heard.[19] *Benton* v. *Rhodes*, 586 F.2d 1 (6th Cir. 1978), cert. denied, 440 U.S. 973 (1979); *Russo* v. *Kirby*, 453 F.2d 548, 551 (2d Cir. 1971).[20]

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[19] The court of appeals concluded that recipients have a property interest in participating in a welfare program "in accordance with preestablished ground rules" (Pet. App. A14). We do not agree. Congress has the authority at any time to change the "ground rules" of a noncontractual welfare program, and recipients have no right of any kind to continued benefits under the "preestablished" rules. See, *e.g.*, *United States Railroad Retirement Board* v. *Fritz*, 449 U.S. 166, 174 (1980); *Flemming* v. *Nestor*, 363 U.S. 603, 608-611 (1960).

[20] Accord, *Ohio State Consumer Education Ass'n* v. *Schweiker*, 541 F. Supp. 915, 920 (S.D. Ohio 1982); *Seniors United for Action* v. *Ray*, 529 F. Supp. 55, 59 (N.D. Iowa 1981); *Whitfield* v. *King*, 364 F. Supp. 1296, 1301-1302 (M.D. Ala. 1973) (three-judge court), modified, 399 F. Supp. 348 (1975), aff'd summarily, 431 U.S. 910 (1977); *Merriweather* v. *Burson*, 325 F. Supp. 709, 710-711 (N.D. Ga. 1970), aff'd in relevant part, 439 F.2d 1092 (5th Cir. 1971); but see *Philadelphia Welfare Rights Organization* v. *O'Bannon*, 525 F. Supp. 1055 (E.D. Pa. 1981). These are to be distinguished from cases in which welfare benefit changes are made on the basis of changes in the recipient's individual circumstances, *e.g.*, *Dilda* v. *Quern*, 612 F.2d 1055 (7th Cir.), cert. denied, 447 U.S. 935 (1980); *Basel* v. *Knebel*, 551 F.2d 395 (D.C. Cir. 1977), and from those in which the implementation of statutory changes requires individual factual determinations, *e.g.*, *Garrett* v. *Puett*, 707 F.2d 930 (6th Cir. 1983); *Banks* v. *Trainor*, 525 F.2d 837 (7th Cir. 1975), cert.

There is a fundamental difference between welfare payment reductions legislated by Congress and those initiated by welfare officials on factual grounds. In the former case, the rights of affected parties—be they taxpayers or beneficiaries of the program—are in the political arena. Citizens have the right to vote, to speak out, and to petition for redress of grievances. But they have no right to particularized notice or an opportunity to be heard regarding their reactions to legislation. *Logan* v. *Zimmerman Brush Co.*, 455 U.S. 422, 432-433 (1982); *O'Bannon* v. *Town Court Nursing Center*, 447 U.S. 773, 799-800 (1980) (Blackmun, J., concurring); *Bi-Metallic Investment Co.* v. *Colorado*, 239 U.S. 441 (1915). Food Stamp recipients, no less than other Americans, are charged with constructive knowledge of statutory changes that affect them and, through the Federal Register, have notice of the implementing regulations. *Federal Crop Insurance Corp.* v. *Merrill*, 332 U.S. at 384-385. The enforceability of Acts of Congress does not depend upon whether affected persons have actual notice of them. *INS* v. *Hibi*, 414 U.S. 5, 8 (1973); see *Heckler* v. *Community Health Services of Crawford County, Inc.*, No. 83-56 (May 21, 1984). Congress may, but need not, provide for additional notice of statutory changes; without any notice at all, Congress may make changes in welfare levels and implement them immediately.

Only when benefits are cut as a result of disputed factual issues do due process requirements of notice and hearing arise. *Codd* v. *Velger*, 429 U.S. 624, 627 (1977); *Goldberg* v. *Kelly*, 397 U.S. at 268.[21] Then, it may fairly

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denied, 424 U.S. 978 (1976); *Willis* v. *Lascaris*, 499 F. Supp. 749 (N.D.N.Y. 1980). In this case, it is not necessary to address the difficult problems raised by the latter class of cases.

[21] In *Goldberg* v. *Kelly*, the Court explained that the rights of notice and hearing "are important in cases * * * where recipients have challenged proposed terminations as resting on incorrect or misleading factual premises or on misapplication of rules or

be said that a protected property interest is at stake, calling for a flexible due process analysis in which the private and public interests, and the nature of the procedure sought, are considered and weighed. *Mathews* v. *Eldridge*, 424 U.S. at 335; see *Arnett* v. *Kennedy*, 416 U.S. 134, 166 (1974) (Powell, J., concurring). This Court has made clear, however, that the "analogy drawn in *Goldberg* between social welfare and 'property,' cannot be stretched to impose a constitutional limitation on the power of Congress to make substantive changes in the law of entitlement to public benefits." *Richardson* v. *Belcher*, 404 U.S. 78, 81 (1971) (citation omitted).

This distinction is reflected in the statutory and regulatory notice and hearing requirements applicable to the Food Stamp program. In general, fact-specific reductions, called "adverse actions," cannot be made without "individual notice" and an opportunity for a "fair hearing and a prompt determination thereafter." 7 U.S.C. 2020(e)(10). The Department's regulations provide that the notice must be sent at least 10 days in advance of the proposed action, and must include information on the proposed action, the reason for the action, the right to a fair hearing, the availability of continued benefits, and sources of further information and legal assistance. 7 C.F.R. 273.13(a)(2) (1983).[22]

In contrast, no notice or hearing procedures are prescribed by statute in the case of across-the-board legislative or regulatory changes in benefit levels or eligibility criteria, called "mass changes." In 1971, in response to *Goldberg* v. *Kelly*, Congress adopted the "adverse action" procedures discussed above, but understood that a hear-

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policies to the facts of particular cases" (397 U.S. at 268 (footnote omitted)). Since such factual and legal judgments are by their nature debatable, a hearing is in order. The same is simply not true of arithmetic calculations; one does not debate sums and products.

[22] But see note 5, *supra*.

ing was not required in advance of a reduction if the issue was one of law "and is not a matter of fact or judgment relating to an individual case." H.R. Rep. 95-464, 95th Cong., 1st Sess. 286 (1977). In 1977, Congress legislated against the backdrop of the Secretary's regulations, and stated its understanding that those regulations "do not require individual notice of adverse action when mass changes in [the] program" are implemented. *Id.* at 289.[23]

By regulation, the Secretary has required that states implementing mass changes must send notices no later than the implementation date to affected households, advising them of the reason for the change in general terms. 7 C.F.R. 273.12(e)(2)(ii). The particularized information required of adverse action notices is not required of mass changes. 7 C.F.R. 273.13(b)(1).

This general notice of mass changes has been instituted as a matter of regulatory policy because it enables households better to adjust their budgets to the changes (43 Fed. Reg. 18896 (May 2, 1978)). Notice also eases the administrative burden on the states because it should "reduce the amount of client visits and phone calls to the agency seeking clarification, reduce the amount of unnecessary appeals, and free up the time of the caseworkers for other tasks" (Pet. App. A76-A77). However, since the relevant decision in the case of an across-the-board statutory change has already been made by Congress, there is no occasion for a hearing on the change (as opposed to a hearing on other factual issues that may be revealed at the time of the change).

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[23] The House Committee urged the Department, notwithstanding its usual practices, to require the states to send notices of "the massive changes" in the 1977 legislation, "so that the individuals affected are fully aware of precisely why their benefits are being adversely affected." H.R. Rep. 96-464, *supra*, at 289. The Committee recognized that "[h]earings would, of course, be unnecessary in the absence of claims of factual error in individual benefit computation and calculation" (*ibid.*).

One way of illustrating the fallacy in the reasoning below is to ask what sort of hearing on the change in the earned income disregard Massachusetts welfare officials could have given. It was not in their power to countermand the decision of Congress; their only choice was to affirm the resulting changes in benefits. The Constitution surely does not require that the states go through the charade of a hearing when they lack the authority to influence the outcome. And if there is no basis for a hearing, there can be no constitutional requirement of notice. *Memphis Light, Gas & Water Division* v. *Craft*, 436 U.S. at 14.

As the court of appeals recognized (Pet. App. A29), the changes involved in this case fall within the category of "mass changes"—those for which there is no constitutional requirement of notice or an opportunity to be heard. It therefore follows that, even if the notices were uninformative, they still exceeded constitutional minima.

B. The Risk Of Computer Miscalculation Of Revised Benefit Levels Does Not Necessitate Advance Individualized Notice

The only plausible argument for requiring advance notice of statutory changes in benefit levels is that there is a risk that benefits would be miscalculated as a result of the change. See *Greenholtz* v. *Nebraska Penal Inmates*, 442 U.S. 1, 13 (1979). Indeed, the court of appeals found that the reason for requiring individualized notice in this case was the district court's purported conclusion that "there was a high likelihood that recipients' benefits would be miscalculated as a result of the statutory change in the earned income deduction" (Pet. App. A21). In theory, the advance individualized notice would enable recipient households to identify miscalculations and obtain corrections before the errors were put into effect.

We submit, however, that the possibility of inadvertent errors does not, in itself, constitute a deprivation of prop-

erty such that advance notice and hearing procedures are required before statutory changes can be implemented. And even if some procedural protections are constitutionally required in certain error-prone circumstances, in cases of this sort, where the change is purely arithmetic, the risk of serious error is negligible. Extension of the principle of the decision below would embroil the federal courts in vast numbers of ministerial acts that presently are performed without controversy or litigation. Thus, even treating the recipients' interest here as a property interest entitled to due process protections, there was no constitutional requirement that Massachusetts issue an individualized notice to affected households in advance of the change.

1. Elimination of errors in food stamp calculations is a worthy goal, one that the federal government, the states, the recipients, and the taxpayers all share. Under recent legislation, Congress has introduced substantial financial incentives to induce the states to find means of reducing their food stamp error rates, both overpayments and underpayments. 7 U.S.C. 2025(c) and (d). The principal weapon against errors is the certification and recertification process, whereby all key information is reviewed and updated by recipients, and verified by the states, at least once a year and in many cases more often. This is a protection both for the recipient and for the fisc. Recipients also have an ongoing right to inspect all information relevant to their benefit determinations, and, from the time of their original application, have been on notice that they may challenge the accuracy of their allotments at any time. Errors, if any, are promptly corrected, and any underpayments for the previous year are refunded. See pages 5-7, *supra*. The Food Stamp program is a model of administrative fairness and concern for accuracy.

Unfortunately, in this as in any complex program, there will be errors. The Commonwealth's best estimate was that there were errors in food stamp allotments in 13%

of its cases in 1980—11% being *overpayments* and 2% being *underpayments* (Pet. App. A77). Inadvertent errors of this sort are a perennial problem of welfare administration. But they do not warrant judicial intervention under the Due Process Clause. As this Court has stated, "the Due Process Clause has never been construed to require that the procedures used to guard against an erroneous deprivation of a protectible 'property' or 'liberty' interest be so comprehensive as to preclude any possibility of error. The Due Process Clause simply does not mandate that all governmental decisionmaking comply with standards that assure perfect, error-free determinations." *Mackey* v. *Montrym*, 443 U.S. 1, 13 (1979); see *Greenholtz*, 442 U.S. at 7. All that is required is that the procedures used be "designed to provide a reasonably reliable basis" for the actions taken. *Mackey*, 443 U.S. at 13; see *Barry* v. *Barchi*, 443 U.S. 55, 64-65 (1979).

Judicial intervention under the Due Process Clause is simply not required to prevent the ordinary incidence of inadvertent error in administration of a government assistance program. In the Food Stamp program, like Social Security, "the administrative goal is accuracy and promptness in the actual allocation of benefits * * *. Fairness can best be assured by Congress and the [Secretary] through sound managerial techniques and quality control designed to achieve an acceptable rate of error." *Califano* v. *Boles*, 443 U.S. 282, 285 (1979). See also *Landon* v. *Plasencia*, 459 U.S. 21, 34-35 (1982).

In comparable circumstances this Court has held that due process does not require an advance hearing merely to call "[c]lerical errors and deficiencies" to the attention of the authorities. The ordinary internal controls of the government agencies involved are generally sufficient to "minimize [this]type of error." *Mackey* v. *Montrym*, 443 U.S. at 16. Similarly, here, any error in the computer program would affect large numbers of recipients, and would likely be detected—and corrected—promptly. In-

deed, the only computer programming error identified in connection with the Massachusetts Food Stamp program as occurring during the time of the events of this case—an error in the calculation of the $10 minimum benefit for certain households with no earned income—was discovered by the Commonwealth itself and corrected during the next monthly benefit period. J.A. 49, 250.

And even if the Commonwealth were not to uncover an error itself, the error would be corrected for all affected individuals upon being brought to the Commonwealth's attention by any one of them, with corrective payments to all. The availability of prompt and full redress for any error makes individual advance notice and hearing procedures all the more unnecessary. *Barry* v. *Barchi*, *supra*; *Mackey* v. *Montrym*, 443 U.S. at 12, 15; *Fusari* v. *Steinberg*, 419 U.S. 379, 389 (1975). See also *Parratt* v. *Taylor*, 451 U.S. 527 (1981) (post-deprivation remedy sufficient for inadvertent and unauthorized deprivation of property).

It is absurd to suggest that notice and hearing procedures, which are designed "to ensure the accurate determination of decisional *facts*, and informed, unbiased exercises of official discretion" (*O'Bannon* v. *Town Court Nursing Center*, 447 U.S. at 797 (Blackmun, J., concurring) (emphasis added)), should be transposed to the field of across-the-board, ministerial calculations. The process that is "due" where disputed factual issues are determinative is simply out of place when all that is left is to add, subtract, multiply, or divide. It is as if appellee Kelly, of *Goldberg* v. *Kelly*, had insisted upon *two* hearings—one to resolve the factual question at issue, and a second to check the State's subsequent arithmetic calculations. A state is compelled, we agree, promptly to correct any arithmetic errors that are brought to its attention; that is all, however, that due process demands in such a case.

2. In any event, the potential for error stemming from the statutory change involved in this case was ex-

ceedingly slim. The nature of the "decision" was wholly ministerial, with no "issues of witness credibility and veracity" that would ordinarily trigger the need for notice and hearing. *Mathews* v. *Eldridge*, 424 U.S. at 343-344 (distinguishing *Goldberg* v. *Kelly*, *supra*). And the decisionmaking function—the computer program—was performed by disinterested professionals rather than by persons acting as "advocate or adversary." *Richardson* v. *Perales*, 402 U.S. 389, 403 (1971). The state food stamp officials who implement congressional policy "ha[ve] every incentive to ascertain accurately and truthfully" the level of recipients' benefits. *Mackey* v. *Montrym*, 443 U.S. at 14. Accordingly, the risk ordinarily averted by due process procedures—of government arbitrariness or unfairness—is nonexistent here. Individualized notice and hearing is an awkward and cumbersome way to improve the accuracy of across-the-board computations that affect thousands of persons in the same way. *O'Bannon* v. *Town Court Nursing Center*, 447 U.S. at 799-801 (Blackmun, J., concurring).

The change from a 20% to an 18% earned income disregard was accomplished by means of a simple instruction to the computer. If the computer was correctly programmed, all of the benefit calculations would be correct. If there were an error in the program, it would affect all (or at least broad classes of) recipients with earned income, and would be promptly discovered. In actuality, we strongly suspect that the computer program here was correctly entered and that there were *no* errors resulting from the change in the earned income disregard.

The court of appeals acknowledged that this view is "appealing in theory" (Pet. App. A23), but nonetheless deferred to the district court's supposed finding "that there was substantial risk of calculation error" (*ibid.*). It is therefore necessary to examine the district court's factual findings in some detail. When we do so, it is evident that the district court failed to distinguish be-

tween errors resulting from the change in the earned income disregard and those resulting from other causes, and that its conclusions regarding error rates are essentially irrelevant to the question at hand.

The district court began by noting (Pet. App. A77) that the Commonwealth's food stamp error rate was about 13%. This error rate includes, however, all errors resulting from faulty data in the system; it does not suggest that the performance of a simple arithmetic calculation by computer would be prone to error. The court then pointed out (Pet. App. A78) that some 9,191 of the households affected by the change in the earned income disregard were participants in the monthly income reporting system (M.I.R.S.), a new system that provides continuous computerized tracking of changes in recipients' monthly income, and that in October through December 1981, there was a backlog in the M.I.R.S. Since the earned income disregard is calculated on the basis of monthly income, the court concluded that "the likelihood of error with respect to any M.I.R.S. household affected by the change in the earned income disregard was increased" (Pet. App. A80).

This conclusion, however, has no bearing on whether the change in the earned income disregard introduced any errors. Admittedly, if the income data in the system with respect to any household were inaccurate for any reason (including but not limited to problems with M.I.R.S.), that household's computed food stamp allotment would likely be incorrect. But this would be true *whether or not there were a change in the earned income disregard.* Providing notice of a change in the earned income disregard would be totally irrelevant to the correction of any errors caused by a backlog in M.I.R.S.[24]

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[24] The court of appeals simply failed to recognize the significance of this point. That court stated (Pet. App. A24):

> The recipients in this case, who were advised only that their benefits would be reduced or terminated, had no way of know-

The district court then recited the findings of a so-called "random sample" of households that received the December 1981 notice (Pet. App. A80-A83). According to a study of this sample conducted by a law student working for plaintiff-respondents, some 585 households (out of 5,013 studied) received notices even though they had no earned income; of them, 211 were listed as experiencing a change in benefits. In addition, some 13 households were listed as having income but no change in benefits. Other than declaring these to be instances of "error" (Pet. App. A82-A83, A89-A90), the district court did not explain the significance of these findings or draw any explicit conclusions from them.

The error rate deducible from this study (4.2%—211 out of 5,013)[25] is quite low, especially considering the

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ing whether their benefits had been correctly computed or whether an error had been generated by the use of inaccurate or out-dated data. Moreover, this was a very confusing time for many of the recipients owing to concomitant changes in other federal assistance programs. Given these circumstances it was not unreasonable for the district court to conclude that the December notice was inadequate.

The question before the district court was whether implementation of the change in the earned income disregard was likely to generate an unacceptable level of errors; for purposes of this case, it did not matter whether recipients could discover errors attributable to *other* causes, such as "inaccurate or out-dated data." See *Merriweather* v. *Burson*, 325 F. Supp. 709, 711 (N.D. Ga. 1970), aff'd in relevant part, 439 F.2d 1092 (5th Cir. 1971). And even if there were temporary problems associated with the switch to M.I.R.S. or stemming from the other welfare changes being made at that time, we fail to see how they could form the basis for general due process standards. "The specific dictates of due process must be shaped by 'the risk of error inherent in the truthfinding process as applied to the generality of cases' rather than the 'rare exceptions.'" *Mackey* v. *Montrym*, 443 U.S. at 14 (quoting *Mathews* v. *Eldridge*, 424 U.S. at 344).

[25] We disregard the remainder of the 585 households, which received a notice but whose benefits were unchanged. Although sending them a notice (if the Commonwealth did so, see note 26,

fact that the law student who conducted the study included *increases* in benefits as well as *decreases* in his calculations (II C.A. App. 74-75). Even to draw this conclusion, however, rather stretches the reliability of the study. It is now established that the student's "random sample" included a large number of households that did not belong in the sample.[26] That error renders the study useless for purposes of this case. Moreover, among the 211 households with changes in benefits but no earned income were some who were affected by an unrelated error in the treatment of the $10 minimum benefit for certain households without earned income, but with substantial unearned income.[27] This error was promptly

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infra) may have been "error," it did not result in injury to anyone. The existence of 13 households with earned income but no change in benefits was not necessarily "error" at all (see note 11, *supra*), and the households certainly were not injured even if it was.

[26] The study was performed using selected pages from a computer printout called the "902 C Report." That was the Commonwealth's report on households with earned income, which were affected by the change (Pet. App. A80; J.A. 62, 250). We are informed that some 17 pages from a different report—the "902 B Report," which is the Commonwealth's report on households that were recalculated but received no change (*ibid.*)—were inadvertently included in the sample. (The fact that pages from the 902 B Report were included in the sample is demonstrated by the two representative pages introduced into the record and printed in the joint appendix (J.A. 43, 44). One of the pages (J.A. 44) is marked as "error code C." This indicates that the page is from the Commonwealth's 902 C Report. The other page (J.A. 43) is marked as "error code B"; it is from the 902 B Report.) Including 902 B households in this study was an error; it would be like including data on a group of Great Danes in a study of heartworm rates among Pekingese.

[27] Two of the 211 households appear on the representative pages in the record; the error in both cases is of this variety. See J.A. 44. Plaintiff-respondents have stipulated that the representative pages contain an example of each type of error found in the entire study. III C.A. App. 304. No other sources of error reflected in the study have been identified in this litigation. It is therefore highly probable that the miscalculation of the minimum benefit

corrected (J.A. 49, 250), and, though it was reflected in the study, is not relevant to this case.[28]

The court of appeals was apparently uncomfortable about reliance on this study. It stated only that the district court "may have been influenced" by it (Pet. App. A25) and that "[w]e repeat this finding only to demonstrate that a number of errors did occur, the simple ministerial nature of the change notwithstanding" (*ibid.*). We believe that the study demonstrates no such thing. More to the point, the study revealed no instance (and by its structure, could not logically reveal any instance) in which any recipient's benefits were miscalculated as a result of the change in the earned income disregard.[29] We consider it significant that the district court could not identify a single individual whose benefits were erroneously computed as a result of the change.

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accounts for all of the 211 households with no earned income whose benefits were reduced. This error, of course, has nothing to do with the reduction in the earned income disregard.

[28] We are therefore baffled by the district court's somewhat cryptic statement that "[t]he random sampling of the 902 C report only identified errors which logically flowed from the fact that the reductions or terminations of benefits were based upon a change in the earned income disregard" (Pet. App. A82).

The court of appeals made no reference to this finding of the district court, and may simply have disregarded it as confusing or internally inconsistent (as it is). If the statement has any bearing on the case, our position is that it is clearly erroneous.

[29] It is not logically possible for a change in the percentage of earned income disregarded to have affected households with no earned income. Eighteen percent of zero—like 20%—equals zero. If the computer erroneously identified a household as one with earned income for purposes of sending a notice, it merely alerted the household either that some other source of income (*e.g.*, disability benefits) had, when reported, been erroneously listed as earned income, or, if the household formerly had earned income, that no data entry was made when the earned income source ended. In either event, the error would have stemmed from the original data entry (or nonentry), not from the recomputation of benefits as a result of the statutory change.

Perhaps most to the point, none of the named plaintiffs, who are by definition typical of the class they represent (see Fed. R. Civ. P. 23(a)), suffered any erroneous deprivation as a result of the change. See note 16, *supra*.

Nonetheless, the court of appeals relied on the district court's supposed factual finding that "there was a high likelihood that recipients' benefits would be miscalculated as a result of the statutory change in the earned income deduction" (Pet. App. A21).[30] But the district court made no such factual finding. The district court simply found that the Commonwealth's base error rate was 13% (*id.* at A77), that the M.I.R.S. backlog "increased" the probability of error with respect to households subject to the statutory change (*id.* at A80), and that it was "error" for the Commonwealth to send the December 1981 notice to households with no earned income, to change the benefits of the 211 households with no earned income, and to send the notice to 13 households with earned income but no change in benefit level (*id.* at A83). The district court made no finding that the risk of error *resulting from the change in the earned income disregard* was "substantial." The relevant conclusion of law was framed as follows (Pet. App. A88-A89 (citations omitted)):

> The calculation of food stamp benefits under the income method requires an individualized determina-

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[30] Throughout this proceeding, the court of appeals applied the "clear error" test of Fed. R. Civ. P. 52(a) to mixed questions of law and fact (Pet. App. A19-A20). Having decided that the district court applied the correct legal standard (the *Mathews* v. *Eldridge* test), the court of appeals virtually abdicated its responsibility to scrutinize the district court's application of that test to the facts of this case. This was error, as a subsequent decision of this Court has established. *Bose Corp.* v. *Consumers Union of United States, Inc.*, No. 82-1246 (Apr. 30, 1984), slip op. 15. This application of an erroneous standard of review would be sufficient reason for this Court to vacate the judgment below. We urge the Court to reach the merits of the case, however, and brief the case on the assumption that it will.

> tion of income, expenses, and deductions for each recipient. This type of calculation creates substantial risks of erroneous deprivation.

To the extent that the "substantial risks of erroneous deprivation" relied on by the district court were due to "individualized determination[s] of income, expenses, and deductions for each recipient," those risks are irrelevant to the arithmetic implementation of an across-the-board change in the earned income disregard. It is difficult to understand how the court of appeals could have sustained the district court's holding on the basis of this irrelevant conclusion.

3. The consequences of the holding below would be far-reaching, and would embroil the federal courts in details of administration of vast numbers of ministerial acts. The risk of error from a computer program changing the earned income disregard from 20% to 18% is comparable to the risk any time a computer is used to make a calculation. It might as easily be argued that taxpayers have a right to notice and a hearing every time their income tax withholding is changed as a result of tax rate modifications, or that government employees must be given enough information to double-check their new pay level before a cost-of-living adjustment can be made.

Another example readily at hand is the adjustment of monthly food stamp benefits in response to recipient-reported changes in monthly income. Such changes are no less susceptible to computer error than the calculation involved here. Indeed, since they involve numerous individual calculations, they are clearly more so. Yet Congress has specifically provided that they can be made *without* any advance notice to the recipients. 7 U.S.C. 2020(e)(10) (last clause). Congress made the judgment that prompt effectuation of changes in food stamp entitlements, in cases where there is no dispute over the underlying facts (since they were provided by the recipient

himself), outweighs any need for advance notice and hearing. S. Rep. 97-504, 97th Cong., 2d Sess. 54-55 (1982). The same interests obtain here.

It is difficult to see a limiting principle in the judgment below. Since computer errors could theoretically be generated whenever a program is modified, notice would be equally required when benefits are *increased* as when they are cut; and since the errors could theoretically infect the allotments of any or all food stamp recipients, whether or not the change would apply to them if properly implemented, the notice would have to be sent to *all* program participants, not just those intentionally affected by the change.

The point is that the change in this case was thoroughly routine and ministerial, not unlike changes made—without notice, without question, without problem—in thousands, perhaps millions, of instances every month in every state. As the First Circuit recognized in an earlier decision in a similar case, *Veiazco* v. *Minter*, 481 F.2d 573, 577-578 (1973):

> the worst fate that could have befallen a recipient would have been a short-term deprivation based on human and/or computer error. The recipient would then have been essentially in no worse a position than if there had been a mistake, human or mechanical, in sending out his regular check. * * * * * There are no questions of credibility, no secret accusers, no personal bias. There is only the question of whether a mathematical formula was correctly applied to a particular amount.

If advance notice is required here, where risk of error is so exceedingly slim, it must be required in all comparable situations. The nation will be awash with notice, and no one will be the better off for it.

II. EVEN ASSUMING SOME DUE PROCESS PROTECTIONS ARE REQUIRED, THE MASSACHUSETTS NOTICE, COUPLED WITH THE OTHER PROCEDURES FOR REDUCING THE RISK OF ERROR, WAS CONSTITUTIONALLY SUFFICIENT

If Massachusetts could, consistent with due process, implement the statutory change in the earned income disregard with no individual notice at all, then no further argument is needed. But there exists a narrower ground for decision, because in fact, pursuant to federal regulation, the Commonwealth provided advance notice to all food stamp recipients affected by the statutory change. They were informed that the earned income disregard had been reduced from 20% to 18% and thus that their benefits might be reduced or terminated. They were told to contact their local welfare office if they needed more information. They were reminded that they had a right to a fair hearing on these changes, and they were told (and here Massachusetts went beyond federal requirements) that if they requested such a hearing, their benefits would remain at the former level during its pendency. Accordingly, even if the courts below were correct that notice of the changes was required, we submit that the notice actually supplied was constitutionally sufficient.

It is not clear what standard is the most appropriate for evaluating the sufficiency of notice under the Due Process Clause. The court of appeals applied the familiar three-factor test of *Mathews* v. *Eldridge*, *supra*, a general approach to deciding whether additional procedural protections should be afforded. On the other hand, in *Mullane* v. *Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950), this Court employed a standard more specifically directed to the sufficiency of notice. In *Memphis Light, Gas & Water Division* v. *Craft*, *supra*, moreover, the Court did not apply the *Eldridge* analysis to the notice issue; it applied *Eldridge* only to the ques-

tion of a hearing.[31] Accordingly, we will follow that example, and will principally rely on the precedents of *Memphis Light* and *Mullane*, with reference to *Eldridge* only where pertinent.

Nonetheless, our argument can be reformulated in terms of the analytical categories of *Eldridge*. The disruptive effect on government interests (see *Eldridge*, 424 U.S. at 335, 347-348) has already been discussed (see pages 16-17, *supra*). The scant risk of erroneous deprivations from implementation of this ministerial change under existing procedures and the probable disutility of additional detailed requirements on the content and format of notice (see *Eldridge*, 424 U.S. at 335, 343-347) has also been touched on (pages 24, 26-33, *supra*) and will be the principal focus of the discussion that follows. Finally, we agree that "the private interest that will be affected by the official action" (*Eldridge*, 424 U.S. at 335) is significant here, though clearly less significant than the termination of disability benefits in *Eldridge* or of welfare benefits in *Goldberg* v. *Kelly*.[32] Even if the

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[31] Use of the *Eldridge* analysis to evaluate notices may be somewhat problematical because in hindsight it will often be possible to say that a better, clearer notice could have been given with no injury to governmental interests. The difficulty for the government commonly arises not so much from the specific requirements imposed by the court, but from the government's inability to anticipate what requirements might be imposed, and from the resultant interference with the program.

[32] In contrast to the terminations of benefits at issue in *Goldberg* v. *Kelly* and *Mathews* v. *Eldridge*, this case involves, for most recipients, only a modest (at most, $6 per month per four-person household) reduction in benefits. (Only comparatively well-off households at the margin of eligibility were terminated as a result of the change.) It is significant, also, that the earned income disregard constitutes an *addition* to benefits above what they would be under a strict comparison of income and food costs; a principal purpose of the disregard is to introduce an incentive to earn and report income. See H.R. Rep. 95-464, 95th Cong., 1st Sess. 60-62 (1977). To decrease a work incentive is not the same as denying the basic necessities of life. See Pet. App. A88; cf. *Goldberg* v. *Kelly*, 397 U.S. at 264.

Eldridge factors are applied, therefore, the same conclusion would be reached: the Massachusetts notice was constitutionally sufficient.

The contrary holdings of the courts below were based on two purported deficiencies in the notice: deficiencies of content and deficiencies of format.[33] We shall address each in turn.

A. Recipients Are Not Constitutionally Entitled To A Numerical Quantification Of The Effect On Them Of A Statutory Change In Benefit Levels

In affirming the district court's finding of a constitutional violation, the court of appeals apparently agreed that a notice of statutory changes in benefit levels must, as a matter of due process, contain "the individual recipient's old food stamp benefit amount, new benefit amount, or the amount of earned income that was being used to compute the change," and state whether the consequence of the change would be a termination or a reduction in benefits (Pet. App. A100).

As explained at page 6, *supra*, all data relevant to a recipient's benefits are available for inspection during every business day, if the recipient has any questions or doubts. Welfare caseworkers are also available to assist or answer questions. And recipients are perforce informed of actual benefit levels when they receive their monthly allotments a few weeks after the notice. This

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[33] The district court's order also stated that the December notice was constitutionally deficient because "[i]t was not timely" (Pet. App. A100). No further explanation or elaboration was provided in the order or the accompanying opinion, and the court of appeals did not address the timeliness issue. If this Court were to hold that some notice was constitutionally required, but to reject the lower courts' findings of deficiencies in content and format, it might be appropriate for plaintiff-respondents to raise the timeliness issue on remand, assuming a justiciable controversy still exists at that time.

case thus concerns the narrow question whether recipient-specific information—readily available through other means—must be included as part of the notice.

It may make sense to require notice of particularized information where a change in benefits is to be made on that basis. In such cases, the recipient will be able to check whether the information is correct, and if it is disputable, to challenge it. Here, however, the change is the result of across-the-board legislative action; there is no new underlying information for the recipient to check. The information the district court would have the Commonwealth supply would be of little value to the recipient in detecting errors resulting from the statutory change; all he could do would be to check the computer's arithmetic.

Given the ministerial nature of the decision, there is so little risk of arbitrariness or error that the process provided—notice of the change in general terms and an opportunity for further information and a hearing—surely meets or exceeds constitutional standards.

In any event, the Massachusetts notice contained all the information necessary to enable a recipient to protect his rights. This Court has stated that "[t]he purpose of notice under the Due Process Clause is to apprise the affected individual of, and permit adequate preparation for, an impending 'hearing.'" *Memphis Light, Gas & Water Division* v. *Craft*, 436 U.S. at 14 (footnote omitted). The Massachusetts notice apprised affected food stamp recipients of their right to a fair hearing and how to obtain it. It further advised them of sources of additional information. All the file data pertinent to the recipients' benefit determinations are freely available to them. It is not necessary for that information to be physically conveyed to each recipient in an advance notice, at least where the benefit reductions are on an across-the-board, not a fact-specific, basis.[34]

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[34] Even in *Memphis Light*, a case involving termination of utility services on a fact-specific basis, this Court did not suggest that the

B. The Due Process Clause Does Not Dictate Type Size, Capitalization, Line Length Or Spacing, Or Reading Difficulty Of Notices

The court of appeals affirmed the district court's conclusion that the "form" of the notice provided by the Commonwealth "was constitutionally inadequate owing to its unfamiliar language, poor composition, small print, exclusive use of capital letters, and excessive line length" (Pet. App. A18). This holding is without basis in the Constitution.

The Constitution does not mandate notice of a type or quality that would be approved by linguistic experts. Rather, notice "must be of such nature as reasonably to convey the required information." *Mullane* v. *Central Hanover Bank & Trust Co.*, 339 U.S. at 314. This is not a technical standard; it is not a delegation of authority to district courts (with the assistance of reading experts) to select type size, line length or spacing, or wording.

We can all applaud the movement toward plain English in public documents, and certainly, as the district court pointed out (Pet. App. A94-A95), it is in the interest of the government as well as the food stamp recipients to provide information in a clear and understandable manner. To recognize the desirability of clearer, simpler notices is not, however, to approve of constitutional litigation as the vehicle for reform. We can think of few enter-

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utility's notice to customers of a proposed termination had to include information specific to the recipient concerning the factual details of his case. A simple notice of the proposed action, with information about how to obtain a hearing, was all that this Court required. Surely no more is needed here, where the benefit reduction is merely the implementation of an across-the-board, statutory change. Cf. *Richardson* v. *Perales*, 402 U.S. at 407 (notice provided of proposed action; specific information on the basis for the action was "on file and available for inspection by the claimant"); *Goldberg* v. *Kelly*, 397 U.S. at 268 (generalized notice adequate where a caseworker is available to discuss the "precise questions" raised in the individual case).

prises so likely to exacerbate red tape and to delay and clog the federal courts as to engage the courts in supervision of the "plain English" of public notices. It would be highly undesirable to constitutionalize, and thus to rigidify, questions of administrative detail of this sort.

The notice at issue is quoted at pages 9-10, *supra*. The first thing to note is that its *accuracy* has not been questioned in this litigation, but only its format and diction. As to that, we concede the notice is not a model of English prose. But there is also no room for doubt that it is "of such nature as reasonably to convey the required information." *Mullane*, 339 U.S. at 314.

To be sure, the lines are long and the type size small. This was in order to fit the notice onto a card for convenient mailing and reference. Perhaps a letter format would have been better. In addition, the use of fewer capital letters might have enhanced readability. We do not think, however, that the *Constitution* is implicated by these typographic decisions.

Reading experts testified that under the most widely used test for measuring reading difficulty, the Massachusetts notice would be understood by persons of between a ninth and a twelfth grade education (Pet. App. A57-A60).[35] This might be thought to be too difficult for the target audience. (On the other hand, since 54.2% of the heads of Massachusetts food stamp households with earned income have completed high school (Pet. App. A62), it might be thought that a notice written at the ninth to twelfth grade level is about right.) But the Constitution, as interpreted by this Court, does not require that notices be the product of expert linguistic analysis. Cf. *Rhodes* v. *Chapman*, 452 U.S. 337, 348-349 n.13 (1981) ("opinions of experts" do not establish constitutional minima). The test is whether the notices reasonably convey the intended information.

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[35] Other tests yielded somewhat higher measures of difficulty (Pet. App. A60-A61).

We are skeptical of using these expert analyses as the basis for a constitutional standard, particularly since they seem to disregard the specialized character of the vocabulary of welfare—a vocabulary that is very likely to be more familiar to those who see it or use it on a regular basis than it is to the population as a whole.[36] Indeed, the district court found that "food stamp recipients are generally familiar with the terms used in the notice" (Pet. App. A96), and that many of the same terms in the notice that caused concern to the reading experts are used in the initial food stamp application form, periodic recertification forms, and reapplication forms as well (*id.* at A65-A66).

We therefore doubt that words such as "within," "division," "recent," "federal," "benefit," "benefits," "eligibility," "eligible," "appeal," "reduced," "reduction," "deduction," "request," "action," "local," "welfare," "percent," "disagree" and the like (Pet. App. A60) will sow great confusion among the food stamp recipients to whom the notice is directed. And we lack the district court's confidence (Pet. App. A76) that a notice of *recent federal* statutory *reductions* in food stamp *benefits*, with information on how *eligible* recipients who *disagree* with the *action* can *request* an *appeal*, could be written without using many of these problematic terms. Moreover, the notice will presumably become even more complicated for the unsophisticated reader if, as the district court would require, additional information of a numerical nature is included—along with additional legal citations, to add to the confusion.

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[36] The vocabulary component of the most widely used reading test, the Dale-Chall test, is based on the familiarity of words to children attending fourth grade in 1948, long before the federal welfare system had become a common feature of American life (Pet. App. A58). To base any conclusions regarding this target audience's ability to understand welfare terminology on the comprehension of children in 1948 is obviously absurd.

Even if much of the notice is difficult to understand, the notice unmistakably begins "IMPORTANT NOTICE —READ CAREFULLY" and explains that the household has a "RIGHT TO A FAIR HEARING." These simple concepts are the heart of the notice; they suffice to put any reasonably diligent person on notice that important information is conveyed and that he has a right to be heard. See *Memphis Light*, 436 U.S. at 13-19. Each of the named plaintiffs, who are assumed to be typical of the class (Fed. R. Civ. P. 23(a)), understood the notice well enough to seek further information and file an appeal (Pet. App. A50-A56). Cf. *Memphis Light*, 436 U.S. at 14 (party's inability to obtain hearing despite repeated good faith efforts "makes clear" that notice inadequately informed her of appeal procedures).

In any event, details of diction and typesetting are the stuff of program administration, not constitutional law. See *Memphis Light*, 436 U.S. at 27 (Stevens, J., dissenting). The level of prescriptive detail in the decision here far exceeds that in *Memphis Light*. There, the Court required only that the customers of the utility "be informed clearly of the availability of an opportunity to present their complaint" (436 U.S. at 14-15 n.15). Every detail of the district court's order here is in excess of that in *Memphis Light*.

Respondents have available a far more suitable means for improving the quality of notices used in the Food Stamp program: they can petition for rulemaking on print size and vocabulary. 5 U.S.C. 553(e); 7 C.F.R. 271.6. This approach would permit participation by affected persons—states as well as recipients—in formulation of sensible standards, and would leave the decision in the hands of the officials entrusted by Congress with administration of the program, subject, of course, to judicial review.[37]

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[37] In this connection, we observe that the Department has published a notice of proposed rulemaking which, if adopted, would require notices of mass changes to include several examples of how

Ultimately, the great vice of the decision below is that its hypersensitivity to relatively insignificant risks of inadvertent error may have a tendency to overshadow the far more important principle that Congress has the sole authority to control the terms and levels of noncontractual public benefits. As a result of this litigation, plaintiff-respondents may receive improved notice (the value of which, in cases involving across-the-board statutory changes, is minimal); but the Commonwealth is prevented from complying with a law duly enacted by Congress. Due process standards should, we submit, be formulated with due attention to the legitimate prerogatives of Congress, the legislatures, and the agencies. Process must not be allowed to overwhelm democratic decisionmaking.

III. THE MASSACHUSETTS NOTICE WAS ADEQUATE UNDER THE FOOD STAMP ACT AND IMPLEMENTING REGULATIONS

The court of appeals also concluded that the Food Stamp Act, 7 U.S.C. 2020(e)(10), and the Department of Agriculture regulations implementing that Act, 7 C.F.R. 273.12(e)(2)(ii), were violated by the Massachusetts notice. This ruling rested entirely on the court's prior conclusion that the notices were constitutionally insufficient (Pet. App. A31-A32); no independent basis exists to sustain it. Nothing in the language of the Act or the regulation cited by the court of appeals contains any *advance* notice requirement with reference to mass changes. The Massachusetts notice would appear to satisfy the regulatory requirement that beneficiaries be notified of the change in benefits. The statute does not contain any additional requirements. Accordingly, if this

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the mass change would affect several differently-situated households. 47 Fed. Reg. 55725 (Dec. 28, 1982). Although this additional requirement would fall far short of what was ordered by the courts below, about half of the states submitting rulemaking comments opposed the proposal on the ground that it would be excessively burdensome.

Court agrees that the Massachusetts notice satisfied constitutional requirements, it should reverse the court of appeals' judgment on statutory and regulatory grounds as well.[38]

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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[38] If plaintiff-respondents have any argument, independent of the constitutional argument, that the Massachusetts notice was in violation of the Food Stamp Act or the "mass change" regulations, they should be free to raise it on remand, assuming that a justiciable controversy still exists.

APPENDIX

1. The Omnibus Budget Reconciliation Act of 1981 (OBRA), Pub. L. No. 97-35, § 106, 95 Stat. 360, provides:

> Section 5(e) of the Food Stamp Act of 1977 is amended by striking out "20 per centum" in the third sentence and inserting in lieu thereof "18 per centum".

2. 7 U.S.C. 2014(e) provides in relevant part:

> In computing household income for purposes of determining eligibility and benefit levels for households containing an elderly or disabled member and determining benefit levels only for all other households, the Secretary shall allow a standard deduction of $85 a month for each household [in the continental United States]. * * * All households with earned income shall be allowed an additional deduction of 18 per centum of all earned income (other than that excluded by subsection (d) of this section), to compensate for taxes, other mandatory deductions from salary, and work expenses. * * *

7 U.S.C. 2020(e) provides in relevant part:

> The State plan of operation required under subsection (d) of this section shall provide, among such other provisions as may be required by regulation—
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> * * * * *
>
> (10) for the granting of a fair hearing and a prompt determination thereafter to any household aggrieved by the action of the State agency under any provision of its plan of operation as it affects the participation of such household in the food stamp program or by a claim against the household for an overissuance: *Provided*, That any household which timely requests such

a fair hearing after receiving individual notice of agency action reducing or terminating its benefits within the household's certification period shall continue to participate and receive benefits on the basis authorized immediately prior to the notice of adverse action until such time as the fair hearing is completed and an adverse decision rendered or until such time as the household's certification period terminates, whichever occurs earlier, except that in any case in which the State agency receives from the household a written statement containing information that clearly requires a reduction or termination of the household's benefits, the State agency may act immediately to reduce or terminate the household's benefits and may provide notice of its action to the household as late as the date on which the action becomes effective;

* * * * *

3. 7 C.F.R. 273.12(e) provides in relevant part:

Mass changes. Certain changes are initiated by the State or Federal government which may affect the entire caseload or significant portions of the caseload. These changes include adjustments to the income eligibility standards, the shelter and dependent care deductions, the Thrifty Food Plan, and the standard deduction; annual and seasonal adjustments to Social Security, SSI, and other Federal benefits, periodic adjustments to AFDC or GA payments; and other changes in the eligibility criteria based on legislative or regulatory actions.

* * * * *

(ii) A notice of adverse action is not required when a household's food stamp benefits are reduced or terminated as a result of a mass change in the public assistance grant. However, State agencies

shall send individual notices to households to inform them of the change. If a household requests a fair hearing, benefits shall be continued at the former level only if the issue being appealed is that food stamp eligibility or benefits were improperly computed.

7 C.F.R. 273.13 (1983) provides in relevant part:

Notice of adverse action.

(a) *Use of notice.* Prior to any action to reduce or terminate a household's benefits within the certification period, the State agency shall, except as provided in paragraph (b) of this section, provide the household timely and adequate advance notice before the adverse action is taken.

(1) The notice of adverse action shall be considered timely if the advance notice period conforms to that period of time defined by the State agency as an adequate notice period for its public assistance caseload, provided that the period includes at least 10 days from the date the notice is mailed to the date upon which the action becomes effective. Also, if the adverse notice period ends on a weekend or holiday, and a request for a fair hearing and continuation of benefits is received the day after the weekend or holiday, the State agency shall consider the request timely received.

(2) * * * The notice of adverse action shall be considered adequate if it explains in easily understandable language: The proposed action; the reason for the proposed action; the household's right to request a fair hearing; the telephone number and, if possible, the name of the person to contact for additional information; the availability of continued benefits; and the liability of the household for any overissuances received while awaiting a fair hearing if the hearing official's decision is adverse to the

household. If there is an individual or organization available that provides free legal representation, the notice shall also advise the household of the availability of the service.

* * * * *

(b) *Exemptions from notice.* Individual notices of adverse action are not required when:

(1) The State initiates a mass change as described in § 273.12(e).

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